

IN THE U.S FEDERAL DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
CIVIL DIVISION

Chris Pascone
2701 Park Center Drive
Alexandria, VA 22302

Plaintiff,

vs.

Oracle America Incorporated &
Tom Rose
Defendants.
1900 Oracle Way.
Reston, VA 20190

)
)
)
) Case No: _____
)
) JURY DEMAND
) For Race Discrimination,
) Harassment and Retaliation
Under Section 1981;
Discrimination, Harassment and
Retaliation Under Title VII;
Discrimination and Retaliation
under the American Disabilities
Act Amendments Act of 2008; and
Retaliation under the Family
Medical Leave Act (FMLA).

INTRODUCTION

Pursuant to FRCP Rule 8, and the plausibility requirements of *Iqbal* and *Twombly*, the Plaintiff Chris Pascone files this lawsuit against his employer, Oracle America Incorporated (Oracle) along with the individual Tom Rose, for race discrimination, harassment and retaliation under 42 U.S.C. § 1981. Pascone also brings additional claims under Title VII, 42 U.S.C. § 2000 et seq., against Oracle for race, sex, and disability discrimination, harassment and retaliation. Finally, Pascone also brings a claim of retaliation under the Family Medical Leave Act (FMLA), 29 U.S.C. § 2611 et seq.

1 Pascone was an employee of Oracle from July 2018 until the
2 time of his termination in August 2019. He was employed as a
3 Sales Associate, earning an annual wage of approximately
4 \$163,000. Pascone is of Italian ancestry. He is also a
5 heterosexual male, married to a woman of Filipino ancestry.
6 While at Oracle, Pascone's supervisor Tom Rose would racially
7 and sexually harass Pascone by calling him a "guido", an
8 "Italian greaseball", and by stating that Pascone was a "fag"
9 and a "lady boy lover."

10 When he complained about this behavior to Oracle, Oracle
11 claimed they were unable to substantiate this behavior. However,
12 an affidavit from his co-worker, Willie Sayyad, confirms the
13 racial and sexual harassment from Oracle and Rose. Additionally,
14 when Pascone sought accommodations under the American's with
15 Disabilities Act to care for his disabled mother, Rose and
16 Oracle also stopped communicating with him in regards to his
17 work duties. Pascone was then terminated in August 2019, and
18 offered a severance of \$3,193.00, along with a waiver of all
19 claims.

20 Consequently, an action for the violation of his civil and
21 employment rights now follows.
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PART I. PARTIES

1. Chris Pascone is of Italian ancestry. He is also a heterosexual (straight) male. Pascone was employed by Oracle as a "Sales Associate" from July 2018 until the time of his termination in August 2019. Under both Section 1981 and Title VII, Pascone is an employee of the Defendant under 42 U.S.C. §2000 *et seq.* He is also an employee under the FMLA, 29 U.S.C § 2611 *et seq.*

2. The Defendant Tom Rose was Pascone's Supervisor at Oracle. Rose is the North American Strategic Cloud Sales Director at Oracle. Based on Rose's LinkedIn Profile,¹ Rose has been with Oracle since 2010 (**Ex. A**).

3. Rose has minimum contacts with this state, and is individually liable under 42 U.S.C §1981 for the intentional infringement of Plaintiff's rights. *See Wright v. StoneMor Partners LLP*, No. 3:12-cv-380, 2012 U.S. Dist. LEXIS 129593, at *4 (W.D.N.C. Sep. 12, 2012) ("[I]ndividual supervisors can only be held liable under Section 1981 if they 'intentionally cause an employer to infringe upon' the rights secured by that statute. [quoting] *Tillman v. Wheaton-Haven Recreation Association*, 517 F.2d 1141, 1145 (4th Cir. 1975)").

¹ <https://www.linkedin.com/in/tom-rose-674a094b/> (last visited 10/16/2020)

1 4. The Defendant Oracle America Incorporated (Oracle) is an
2 American multinational with hundreds of employees in the
3 United States and worldwide. Oracle provides products and
4 services that address aspects of corporate information
5 technology (IT), and trades on the S&P 500 under the ticker
6 symbol, "ORCL."

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9 5. Under Section 1981 and Title VII, Oracle is an employer of
10 the Plaintiff under 42 U.S.C §2000 *et seq.* They are also an
11 employer under the FMLA, 29 U.S.C § 2611 *et seq.*
12

13 **PART II. EXHAUSTION OF EEOC ADMINISTRATIVE REMEDIES**

14 6. On January 2020, Pascone filed a charge of discrimination
15 (Form 5) with the U.S. Equal Employment Opportunity
16 Commission (EEOC) alleging race, color, sex, national
17 origin, disability discrimination, harassment and
18 retaliation.
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21 7. On March 10, 2020, Oracle filed its position statement with
22 the EEOC.
23

24 8. On September 30, 2020, the EEOC issued a "Right to Sue". It
25 was received by counsel for the Plaintiff on or about
26 October 8, 2020. This action was filed in this Court within
27 90 days of receipt of the Right to Sue under 42 U.S.C. §
28 2000(e)-5(f)(1).
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1 9. There are no administrative or exhaustion requirements
2 under 42 U.S.C §1981, and the Family Medical Leave Act
3 (FMLA) .
4

5 **PART III. JURISDICTION & VENUE**

6 8. This Court has jurisdiction of this action under 28 U.S.C.
7 §1331, 28 U.S.C §1343 (4) and 42 U.S.C. §2000(e)-(5) f in
8 order to protect rights guaranteed by 42 U.S.C §1981; Title
9 VII of the 1964 Civil Rights Act, 42 U.S.C. §2000 (e) *et*
10 *seq.* and 42 U.S.C. § 12111 *et seq.*
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13 9. Venue is proper in this Court because the Defendants have
14 sufficient contacts with the venue. Pascone was employed
15 and terminated by Oracle while working at the Reston,
16 Virginia location, and the events and allegations contained
17 in this action also occurred in Virginia.
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20 **PART IV. STATEMENT OF FACTS**

21 10. The Plaintiff Chris Pascone is of Italian ancestry and
22 ethnicity. Pascone is a heterosexual male. He is married to
23 an Asian female from the Philippines. Pascone also has a
24 disability association with his mother, who suffers from
25 multiple sclerosis (MS). His mother is wheelchair bound.
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28 11. Pascone was employed with the Defendant Oracle from July
29 2018 to August 2019. He was employed as a Strategic Cloud
30 Education Sales Representative, with an annual salary of
31 approximately \$86,000, plus another \$86,000 in yearly
32

1 commissions, for a total annual wage of approximately
2 \$172,000.

3 12. Pascone was employed at the Oracle facility located at 1900
4 Reston Parkway, Reston, Virginia.

5 13. Pascone's immediate supervisor was Tom Rose, a White Male.

6 14. Pascone reported to Rose only, on a daily basis.

7 15. Rose also had approximately another 12-16 employees and/or
8 Sales Representatives report to him.

9 16. Pascone's duties while at Oracle included making sales
10 calls and emails to Oracle customers. As part of his
11 duties, he was also provided with an American Express
12 (AMEX) credit card for business related expenses.

13 17. While at Oracle, Pascone was subject to sexual and racial
14 harassment by his supervisor, Rose.

15 18. Almost immediately upon Pascone's hire, Rose started making
16 racially and derogatory remarks on a frequent and regular
17 basis towards Pascone.

18 19. Pascone was deeply offended by these racial and sexual
19 remarks of unwelcomed harassment.

20 20. For example, Rose would openly say to Pascone's team, that
21 Pascone was a homosexual, and that Pascone was lying about
22 his sexual orientation.

23 21. Rose during this time was also aware that Pascone was
24 engaged to his fiancée, a female, from the Philippines.

1 22. On October 10, 2018, Rose slapped Pascone on the ass and
2 said, "*Well I thought you swing that way with all the lady*
3 *boys.*" This incident was also witnessed by Pascone's co-
4 worker, William Sayyad.
5

6 23. Pascone was deeply offended and humiliated. The harassment
7 also made it difficult for him to concentrate at work.
8

9 24. On November 28, 2018, Rose again made a harassing and
10 offensive statement suggesting that Pascone's vacation in
11 Asia, in December 2018 with Pascone's fiancée was to "bang
12 the lady boys."
13

14 25. Everyone in the room laughed. Pascone was again deeply
15 offended by the continued and unwelcomed harassment.
16

17 26. On November 29, 2018, Rose again said to Pascone, in
18 reference to his trip to Asia, "don't enjoy too many lady
19 boys because we know what you are into!" Pascone was again
20 deeply offended, and had trouble concentrating at work.
21

22 27. Sometime in December 2018 or January 2019, Pascone on his
23 own initiative had a conversation with his manager and
24 supervisor Tom Rose, regarding work and customer related
25 expenses on his Amex corporate credit card. Pascone let
26 Rose know that during his (Pascone's) travels, fraudulent
27 activity had occurred on the Amex card, which Pascone was
28 working to correct. Rose told Pascone to deal with this
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1 matter himself. All issues on this matter were resolved
2 sometime in Spring 2019.

3 28. In January 2019, Sayyad informed Pascone, that Rose had
4 said, that "he (Rose) *will do whatever it takes to get the*
5 *fag (Pascone) out of here!*" Once again Pascone was deeply
6 offended for being referred to as a "fag." Pascone is also
7 not a homosexual.
8

9
10 29. In February 2019, Rose also called Pascone, an "*Italian*
11 *gangster*" and a "*Sketchy Italian grease ball.*"
12

13 30. Pascone was again deeply offended and humiliated. Pascone
14 had trouble concentrating at work by the continued racial
15 and sex harassment.
16

17 **Pascone's February 2019 - April 2019 Protected Activities**
18

19 31. Sometime in February 2019 and again in March 2019, Pascone
20 engaged in protected activity by voicing his opposition to
21 the harassment in a telephone call with Senior Human
22 Resources (HR) Administrator Angela Floyd. In April 2019,
23 Pascone for the third time, again complained of harassment
24 to Karen Terry, Senior HR advisor.
25

26
27 32. All this while, Pascone also believed that he was being
28 harassed based on the basis of his race and sex.
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1 33. In March/April 2019, HR had a discussion with Pascone about
2 the use of racial slurs on Oracle's *LinkedIn* webpage.²

3 Oracle alleged these slurs were made by Pascone.
4

5 34. Pascone informed HR that he had no access or control over
6 the Defendant's corporate webpage and that judging by the
7 language used it was possibly made by someone in a
8 leadership position, including Rose to slander and defame
9 Pascone.
10

11 35. Oracle Sales Representatives also do not have the ability
12 to edit or correct any statements made or published on the
13 Defendant's *LinkedIn* webpage.
14

15 36. Upon information and belief, Rose may have had access to
16 edit, add or correct the content of Oracle's *LinkedIn*
17 webpage.
18

19
20 **Disability Discrimination Claims.**

21 37. In the March 2019 period, Pascone was meeting 52% of his
22 sales quota and was in the top 4 of his entire sales team.
23

24 38. Pascone had closed several software deals in the month of
25 February 2019, and his performance was equal to or
26 exceeding his peers.
27
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² <https://www.linkedin.com/company/oracle> (last visited 12/15/2020)

1 39. In March 2019, Pascone's brother died from a car accident.

2 His mother, a resident in upstate New York, was left
3 without a care provider.
4

5 40. During this March/April 2019 period, Pascone also completed
6 the Oracle's "Accommodations Request Form" so that he could
7 take care of his mother and make funeral arrangements for
8 his brother.
9

10 41. In April 2019, Pascone began taking care of his mother, a
11 disabled individual under the American Disabilities Act
12 Amendments Act of 2008 (ADAAA). She was diagnosed with
13 Multiple Sclerosis (MS), which affected the major life
14 activities of eating, sleeping, walking, standing, sitting,
15 speaking, breathing, learning, reading, concentrating,
16 thinking, communicating, and interacting with others. She
17 was also wheelchair bound.³
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21 42. Pascone sought permission to work remotely so he could take
22 care of his mother.
23

24 43. Other Sales Representatives who were allowed to work
25 remotely were: Jeff Gamelin; Bill Gamelin; Ed Quinn and
26 Martin Dandridge. There may well be others.
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30 ³ Under the ADAAA, no employer shall discriminate against an employee, "denying equal jobs or
31 benefits to a qualified individual because of the known disability of the individual with whom the
32 qualified individual is known to have a relationship or association..." 42 U.S.C. §12112(b)(4); *Thompson*
v. N.A. Stainless Steel, 131 S.Ct. 863 (2011).

1 44. Soon after engaging in protected activity under the ADAAA
2 and Title VII, Rose retaliated against Pascone by not
3 communicating with Pascone regarding his work duties.
4

5 45. Numerous emails, voice mails, text and instant messages
6 from Pascone to Rose on work related matters went
7 unreturned.
8

9 46. Rose's non-communication with Pascone on work related
10 matters, prevented Pascone from performing his work duties.
11

12 47. On or about May 20, 2019, Pascone was informed that he was
13 being terminated, effective May 21, 2019 for being absent
14 without leave (AWOL). No other reasons were provided.
15

16 48. Pascone immediately sent an email to Oracle management:
17 Barrows, Floyd, Terry and Rose, and informed them that he
18 was still at work, and that despite his numerous attempts
19 to communicate with his supervisor Rose regarding his work
20 responsibilities and duties, Rose was not returning
21 Pascone's email and telephone calls.
22
23

24 49. Barrows withdrew Pascone's notice of termination.
25

26 50. On July 23, 2019, the undersigned counsel also communicated
27 with Barrows and informed her of his claims under Title VII
28 and other state and federal discrimination laws.
29

30 51. Two (2) days later on July 25, 2019, the undersigned also
31 communicated with counsel for Oracle, Jenny Cortner.
32

1 52. On July 29, 2019, Pascone again had a conversation with
2 Barrows and Daniel Scott, Director Global Investigations,
3 about the harassment he had been experiencing at work. The
4 conversation lasted an hour. They offered no help, nor
5 explained to Pascone, what would be the next steps.
6

7 53. Oracle later determined that Pascone's allegations of
8 harassment could not be collaborated.
9

10 54. Oracle did not try very hard. Oracle never contacted Willie
11 Sayyad, the affiant who had provided a statement. This was
12 despite Pascone telling Oracle to contact Sayyad.
13

14 55. Sayyad a co-worker of Pascone, who also reported to Rose,
15 states in his affidavit that Rose would frequently sexually
16 and racially harass Pascone, and that Rose also called
17 Sayyad a "camel jockey" and if he (Sayyad) was riding his
18 "camel with precision and care." Sayyad is Palestinian, and
19 was extremely offended by the racial harassment from Rose.
20
21

22 56. Sayyad's affidavit states that Rose would frequently call
23 Pascone, a "greasy Italian and a sketchy guido" and that
24 Pascone, was "a lady boy lover and a little homo."
25
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27 57. Less than 30 days after Pascone's protected activities, on
28 August 22, 2019, Pascone received an overnight letter of
29 termination from Senior VP of Cloud Global Sales, Lawrence
30 Jelley.
31

32 58. Lawrence Jelley works in Australia (**Ex. B**).

1 59. Plaintiff has neither met nor spoken to Jelley.

2 60. No reason for his termination was provided in this August
3 22, 2019 letter.
4

5 61. At the time of Pascone's termination he was also performing
6 satisfactorily.
7

8 62. Pascone was then offered a severance payment of \$3,193.00,
9 in exchange for releasing all of his legal claims against
10 Oracle. Pascone did not sign the release.
11

12 63. Pascone was then replaced by an individual outside his
13 protected class, and one who did not engage in protected
14 activities under the laws.
15

16 **PART V. CAUSES OF ACTION.**

17 **COUNT I. RACE DISCRIMINATION UNDER §1981.**

18 64. Plaintiff incorporates by reference all the allegations
19 above.
20

21 65. Plaintiff is of Italian race, ancestry and/or ethnicity.

22 66. Defendants Oracle and Rose intentionally discriminated
23 against Plaintiff Christopher Pascone on account of his
24 Italian race, ancestry and/or ethnicity in violation of 42
25 U.S.C. § 1981 by denying him equal terms and conditions of
26 employment including but not limited to Rose's non-
27 communications with Pascone and/or by terminating him. See
28 *Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 611
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1 (1987) ("[G]roups as constituting races, including Swedes,
2 Norwegians, Germans, Greeks, Finns, Italians[.]")

3 67. Plaintiff's discrimination was not experienced by others
4 outside his protected class.
5

6 68. Defendants intentionally interfered with Plaintiff's
7 contract of employment because of their discriminatory
8 animus towards his ancestry, race and/or ethnicity.
9 Defendants acted in a willful and wanton manner and in
10 callous disregard for the federally-protected rights of the
11 Plaintiff.
12

13 69. As a direct and proximate result of this injury from the
14 Defendants, Plaintiff has suffered and is suffering
15 considerable injury, including but not limited to loss of
16 substantial past and future salary and income, benefits and
17 other privileges and entitlements of employment, loss of
18 professional status and career enhancing and advancement
19 opportunities and loss of retirement savings and benefits.
20 The Plaintiff has also suffered from emotional distress
21 arising from the loss of his job, the damage to his
22 professional reputation and the embarrassment, humiliation,
23 and indignity arising from the discriminatory conduct of
24 Defendants and/or agents or employees acting on its behalf,
25 and the stress and anxiety caused by his wrongful
26 termination and resultant financial hardship.
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1 70. As a consequence of Defendants' action, it is additionally
2 liable for attorney's fees and other costs and interest in
3 pursuit of this litigation.
4

5 **COUNT II. HARASSMENT & HOSTILE WORK ENVIRONMENT UNDER § 1981.**

6 71. Plaintiff reincorporates by reference the allegations
7 above.
8

9 72. Defendants Oracle and Rose created a hostile work
10 environment and/or harassed Plaintiff because of his race,
11 ethnicity and/or ancestry, the offending conduct was
12 unwelcome, was based on Plaintiff's protected class, and
13 was sufficiently severe or pervasive when it altered the
14 conditions of his employment and created an abusive work
15 environment and was imputable to his employer Oracle and
16 Rose.
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20 73. Plaintiff was deeply offended by the behavior.

21 74. The affirmative defense of *Faragher*⁴ and *Ellerth*⁵ allows an
22 employer to avoid strict liability for a supervisor's
23 harassment of an employee if no tangible employment action
24 was taken against the employee. Examples of tangible
25 employment action include "discharge, demotion, or
26 undesirable reassignment." *Matvia v. Bald Head Island*
27 *Mgmt.*, 259 F.3d 261, 266 (4th Cir.2001).
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32 ⁴ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)

⁵ *Burlington Indus., Inc., v. Ellerth*, 524 U.S. 742 (1998)

1 75. Plaintiff here suffered tangible employment actions from
2 his supervisor when he was unable to perform his job
3 because of the harassment, when Rose stopped communicating
4 with Pascone on work related matters, stripped of all of
5 his employment duties and/or when he was subsequently
6 terminated in August 2019. As a result, "vicarious
7 liability is absolute." *Mikels v. City of Durham*, 183 F.3d.
8 323, 332 (4th Cir. 1999).

9
10
11 76. As a direct and proximate result of this injury from the
12 Defendants, Plaintiff has suffered and is suffering
13 considerable injury, including but not limited to loss of
14 substantial past and future salary and income, benefits and
15 other privileges and entitlements of employment, loss of
16 professional status and career enhancing and advancement
17 opportunities and loss of retirement savings and benefits.
18 The Plaintiff has also suffered from emotional distress
19 arising from the loss of his job, the damage to his
20 professional reputation and the embarrassment, humiliation,
21 and indignity arising from the discriminatory conduct of
22 Defendants and/or agents or employees acting on its behalf,
23 and the stress and anxiety caused by his wrongful
24 termination and resultant financial hardship.
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1 77. As a consequence of Defendants' actions, it is additionally
2 liable for attorney's fees and other costs and interest in
3 pursuit of this litigation.
4

5 **COUNT III. RETALIATION UNDER § 1981**

6 78. Plaintiff reincorporates by reference the allegations
7 above.
8

9 79. Plaintiff engaged in protected activity and opposition to
10 practices made unlawful under Section 1981 while employed
11 by the Defendants.
12

13 80. As a result of his protected activities and opposition to
14 practices made unlawful under Section 1981, Plaintiff was
15 subjected to an adverse employment action, up to and
16 including termination.
17

18 81. A casual connection exists between Plaintiff's protected
19 activities and the adverse employment actions taken by the
20 Defendants.
21

22 82. As a direct and proximate result of this injury from the
23 Defendants, Plaintiff has suffered and is suffering
24 considerable injury, including but not limited to loss of
25 substantial past and future salary and income, benefits and
26 other privileges and entitlements of employment, loss of
27 professional status and career enhancing and advancement
28 opportunities and loss of retirement savings and benefits.
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31
32 The Plaintiff has also suffered from emotional distress

1 arising from the loss of his job, the damage to his
2 professional reputation and the embarrassment, humiliation,
3 and indignity arising from the discriminatory conduct of
4 Defendants and/or agents or employees acting on its behalf,
5 and the stress and anxiety caused by his wrongful
6 termination and resultant financial hardship.
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9 83. As a consequence of Defendants' actions, it is additionally
10 liable for attorney's fees and other costs and interest in
11 pursuit of this litigation.
12

13 **COUNT IV. RACE DISCRIMINATION UNDER TITLE VII.**

14 **42 U.S.C. § 2000 ET SEQ.**

15
16 84. Plaintiff reincorporates by reference all the allegations
17 above.

18 85. Plaintiff is of Italian race, ancestry and/or ethnicity.

19
20 86. Defendant Oracle intentionally discriminated against
21 Plaintiff Christopher Pascone on account of his race,
22 ancestry and/or ethnicity in violation of Title VII, by
23 denying him equal terms and conditions of employment and/or
24 by terminating him.
25

26
27 87. Plaintiff's race discrimination was not experienced by
28 others outside his protected class.

29
30 88. Defendant intentionally interfered with Plaintiff's
31 contract of employment because of their discriminatory
32 animus towards his race. Defendant acted in a willful and

1 wanton manner and in callous disregard for the federally-
2 protected rights of the Plaintiff.

3 89. As a direct and proximate result of this injury from the
4 Defendant, Plaintiff has suffered and is suffering
5 considerable injury, including but not limited to loss of
6 substantial past and future salary and income, benefits and
7 other privileges and entitlements of employment, loss of
8 professional status and career enhancing and advancement
9 opportunities and loss of retirement savings and benefits.
10 The Plaintiff has also suffered from emotional distress
11 arising from the loss of his job, the damage to his
12 professional reputation and the embarrassment, humiliation,
13 and indignity arising from the discriminatory conduct of
14 Defendant and/or agents or employees acting on its behalf,
15 and the stress and anxiety caused by his wrongful
16 termination and resultant financial hardship.

17 90. As a consequence of Defendant's action, it is additionally
18 liable for attorney's fees and other costs and interest in
19 pursuit of this litigation.

20 **COUNT V. SEX DISCRIMINATION UNDER TITLE VII.**

21 **42 U.S.C. §2000 *ET SEQ.***

22 91. Plaintiff reincorporates by reference all the allegations
23 above.

24 92. Plaintiff is a heterosexual male.

1 93. Defendant Oracle intentionally discriminated against
2 Plaintiff on account of his "sex," in violation of Title
3 VII, by denying him equal terms and conditions of
4 employment and/or by terminating him.
5

6 94. Plaintiff's discrimination was not experienced by others
7 outside his protected class.
8

9 95. Defendant intentionally interfered with Plaintiff's
10 contract of employment because of their discriminatory
11 animus towards his sex. Defendant acted in a willful and
12 wanton manner and in callous disregard for the federally-
13 protected rights of the Plaintiff.
14
15

16 96. As a direct and proximate result of this injury from the
17 Defendant, Plaintiff has suffered and is suffering
18 considerable injury, including but not limited to loss of
19 substantial past and future salary and income, benefits and
20 other privileges and entitlements of employment, loss of
21 professional status and career enhancing and advancement
22 opportunities and loss of retirement savings and benefits.
23 The Plaintiff has also suffered from emotional distress
24 arising from the loss of his job, the damage to his
25 professional reputation and the embarrassment, humiliation,
26 and indignity arising from the discriminatory conduct of
27 Defendant and/or agents or employees acting on its behalf,
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1 and the stress and anxiety caused by his wrongful
2 termination and resultant financial hardship.

3 97. As a consequence of Defendant's action, it is additionally
4 liable for attorney's fees and other costs and interest in
5 pursuit of this litigation.
6

7 **COUNT VI. SEX HARASSMENT & HOSTILE WORK ENVIRONMENT UNDER**
8
9 **TITLE VII. 42 U.S.C §2000 ET SEQ.**

10 98. Plaintiff reincorporates by reference all the allegations
11 above.
12

13 99. Defendant Oracle created a hostile work environment and/or
14 harassed Plaintiff because of his "sex," the offending
15 conduct was unwelcome, was based on Plaintiff's protected
16 class, and was sufficiently severe or pervasive when it
17 altered the conditions of his employment and created an
18 abusive work environment and was imputable to his employer
19 Oracle.
20
21

22 100. Plaintiff was deeply offended by the unwelcomed sexual
23 harassment.
24

25 101. The affirmative defenses of *Faragher*⁶ & *Ellerth*⁷ allow an
26 employer to avoid strict liability for a supervisor's
27 harassment of an employee if no tangible employment action
28 was taken against the employee. Examples of tangible
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32 ⁶ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)

⁷ *Burlington Indus., Inc., v. Ellerth*, 524 U.S. 742 (1998)

1 employment action include "discharge, demotion, or
2 undesirable reassignment." *Matvia v. Bald Head Island Mgmt.*,
3 259 F.3d 261, 266 (4th Cir.2001).
4

5 102. Plaintiff here suffered tangible employment actions from
6 his supervisor when he was unable to perform his job
7 because of the harassment, when the employer stopped
8 communicating with him on work related matters, stripped of
9 all of his employment duties and/or when he was
10 subsequently terminated in August 2019. As a result,
11 "vicarious liability is absolute." *Mikels v. City of*
12 *Durham*, 183 F.3d. 323, 332 (4th Cir. 1999).
13
14
15

16 103. As a direct and proximate result of this injury from the
17 Defendants, Plaintiff has suffered and is suffering
18 considerable injury, including but not limited to loss of
19 substantial past and future salary and income, benefits and
20 other privileges and entitlements of employment, loss of
21 professional status and career enhancing and advancement
22 opportunities and loss of retirement savings and benefits.
23 The Plaintiff has also suffered from emotional distress
24 arising from the loss of his job, the damage to his
25 professional reputation and the embarrassment, humiliation,
26 and indignity arising from the discriminatory conduct of
27 Defendants and/or agents or employees acting on its behalf,
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1 and the stress and anxiety caused by his wrongful
2 termination and resultant financial hardship.

3 104. As a consequence of Defendants' actions, it is
4 additionally liable for attorney's fees and other costs and
5 interest in pursuit of this litigation.
6

7 **COUNT VII. RACIAL HARASSMENT & HOSTILE WORK ENVIRONEMENT UNDER**
8
9 **TITLE VII. 42 U.S.C. §2000 ET SEQ.**

10 105. Plaintiff reincorporates by reference all the allegations
11 above.
12

13 106. Defendant Oracle created a hostile work environment and/or
14 harassed Plaintiff because of his "race," the offending
15 conduct was unwelcome, was based on Plaintiff's protected
16 class, and was sufficiently severe or pervasive when it
17 altered the conditions of his employment and created an
18 abusive work environment and was imputable to his employer
19 Oracle.
20
21

22 107. Plaintiff was deeply offended by the unwelcomed racial
23 harassment.
24

25 108. The affirmative defense of *Faragher*⁸ and *Ellerth*⁹ allows
26 an employer to avoid strict liability for a supervisor's
27 harassment of an employee if no tangible employment action
28 was taken against the employee. Examples of tangible
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32 ⁸ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)

⁹ *Burlington Indus., Inc., v. Ellerth*, 524 U.S. 742 (1998)

1 employment action include "discharge, demotion, or
2 undesirable reassignment." *Matvia v. Bald Head Island*
3 *Mgmt.*, 259 F.3d 261, 266 (4th Cir.2001).
4

5 109. Plaintiff here suffered tangible employment actions from
6 his supervisor when he was unable to perform his job
7 because of the harassment, when the employer stopped
8 communicating with him, stripped Plaintiff of all of his
9 employment duties and/or when he was subsequently
10 terminated in August 2019. As a result, "vicarious
11 liability is absolute." *Mikels v. City of Durham*, 183 F.3d.
12 323, 332 (4th Cir. 1999).
13
14
15

16 110. As a direct and proximate result of this injury from the
17 Defendants, Plaintiff has suffered and is suffering
18 considerable injury, including but not limited to loss of
19 substantial past and future salary and income, benefits and
20 other privileges and entitlements of employment, loss of
21 professional status and career enhancing and advancement
22 opportunities and loss of retirement savings and benefits.
23 The Plaintiff has also suffered from emotional distress
24 arising from the loss of his job, the damage to his
25 professional reputation and the embarrassment, humiliation,
26 and indignity arising from the discriminatory conduct of
27 Defendants and/or agents or employees acting on its behalf,
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1 and the stress and anxiety caused by his wrongful
2 termination and resultant financial hardship.

3 111. As a consequence of Defendants' actions, it is
4 additionally liable for attorney's fees and other costs and
5 interest in pursuit of this litigation.
6

7 **COUNT VIII. RETALIATION UNDER TITLE VII. 42 U.S.C §2000 *ET SEQ.***
8

9 112. Plaintiff reincorporates by reference all the allegations
10 above.
11

12 113. Plaintiff engaged in protected activity and opposition to
13 practices made unlawful under Title VII, 42 U.S.C. §2000 *et*
14 *seq.*, while employed by the Defendants.
15

16 114. As a result of his protected activities and opposition to
17 practices made unlawful under Title VII, Plaintiff was
18 subjected to adverse employment actions, up to and
19 including termination.
20

21 115. A casual connection exists between Plaintiff's protected
22 activities and the adverse employment actions taken by the
23 Defendants.
24

25 116. As a direct and proximate result of this injury from the
26 Defendants, Plaintiff has suffered and is suffering
27 considerable injury, including but not limited to loss of
28 substantial past and future salary and income, benefits and
29 other privileges and entitlements of employment, loss of
30 professional status and career enhancing and advancement
31
32

1 opportunities and loss of retirement savings and benefits.
2 Plaintiff has also suffered from emotional distress arising
3 from the loss of his job, the damage to his professional
4 reputation and the embarrassment, humiliation, and
5 indignity arising from the discriminatory conduct of
6 Defendants and/or agents or employees acting on its behalf,
7 and the stress and anxiety caused by his wrongful
8 termination and resultant financial hardship.
9
10
11

12 117. As a consequence of Defendants' actions, it is
13 additionally liable for attorney's fees and other costs and
14 interest in pursuit of this litigation.
15

16 **COUNT IX. DISABILITY DISCRIMINATION UNDER the ADAAA.**

17 **42 U.S.C. §12112 ET SEQ.**

18 118. Plaintiff reincorporates by reference all the allegations
19 above.
20

21 119. Under the American Disabilities Act Amendments Act (ADAAA)
22 of 2008, "no employer shall discriminate against an
23 employee, "denying equal jobs or benefits to a qualified
24 individual because of the known disability of the
25 individual with whom the qualified individual is known to
26 have a relationship or association..." 42 U.S.C.
27 §12112(b) (4); *Thompson v. N.A. Stainless Steel*, 131 S.Ct.
28 863 (2011)
29
30
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32

1 120. In the present instance, Pascone's mother has a disability
2 and a record of said disability under the ADAAA. At all
3 times Plaintiff's employer Oracle had knowledge of the
4 mother's disability or perceived disability, since Pascone
5 requested leave to care for his disabled mother. Mrs.
6 Pascone also has a record of such an impairment and was
7 regarded as having such an impairment by Oracle under the
8 ADAAA.
9
10

11 121. Plaintiff alleges that one or more of the agents,
12 managers, supervisors, and/or employees of Oracle, acting
13 on its behalf, subjected him to disability discrimination
14 on the basis of his association to his mother, when they
15 stripped him of his prior duties, refused to communicate
16 with him, only to then terminate him, affecting the terms
17 and conditions of his employment.
18
19
20

21 122. As a direct and proximate result of this injury from the
22 Defendant, Plaintiff has suffered and is suffering
23 considerable injury, including but not limited to loss of
24 substantial past and future salary and income, benefits and
25 other privileges and entitlements of employment, loss of
26 professional status and career enhancing and advancement
27 opportunities and loss of retirement savings and benefits.
28 Plaintiff has also suffered from emotional distress arising
29 from the transfer, the damage to his professional
30
31
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1 reputation and the embarrassment, humiliation, and
2 indignity arising from the discriminatory conduct of
3 Defendant and/or agents or employees acting on its behalf,
4 and the resultant financial hardship.
5

6 123. As a consequence of Defendant's action, they are
7 additionally liable for attorney's fees and other costs and
8 interest in pursuit of this litigation.
9

10 **COUNT X. FAILURE TO ACCOMMODATE UNDER THE ADAAA**

11 **42 U.S.C. §12112 ET SEQ.**
12

13 124. Plaintiff reincorporates by reference all the allegations
14 above.
15

16 125. Defendant was at all times an employer of Plaintiff for
17 purposes of the American Disabilities Act Amendments Act of
18 2008 (ADAAA), 42 U.S.C. §§12112 et seq.
19

20 126. Plaintiff Pascone has a disability association with his
21 mother, who has been diagnosed with Multiple Sclerosis
22 (MS). She is also wheelchair bound, that substantially
23 limits one or more major life activities under the ADAAA in
24 this case: eating, sleeping, walking, standing, sitting,
25 and breathing.
26
27

28 127. At all times of Plaintiff's employment, Defendant had
29 knowledge of the disability or perceived disability.
30
31
32

1 128. Plaintiff informed Defendant of his request for reasonable
2 accommodations in this case to work remotely like his
3 colleagues at Oracle.
4

5 129. Plaintiff alleges that one or more of the agents,
6 managers, or supervisors of Defendant failed to accommodate
7 his ADAAA requests. Had Defendant engaged in the
8 interactive process, a reasonable accommodation would have
9 been identified, that would not have caused an undue burden
10 or undue hardship to the Plaintiff. Plaintiff would also
11 have been able to perform the essential functions of his
12 position with an accommodation under the ADAAA.
13
14
15

16 130. The defendant subsequently not only failed to engage in
17 the interactive process, but also denied all reasonable
18 requests for accommodations for alternative work
19 arrangements, but also subjected Plaintiff to adverse
20 employment actions, by terminating him in August 2019.
21

22 131. The Defendant is unable to show that the reasonable
23 accommodations requested would have imposed "an undue
24 hardship on the operation of the business." 42 U.S.C. §
25 12112(b)(5).
26
27

28 132. As a direct and proximate result of this injury from the
29 Defendant, Plaintiff has suffered and is suffering
30 considerable injury, including but not limited to loss of
31 substantial past and future salary and income, benefits and
32

1 other privileges and entitlements of employment, loss of
2 professional status and career enhancing and advancement
3 opportunities, and loss of retirement savings and benefits.
4 Plaintiff has also suffered from emotional distress arising
5 from the loss of her job, the damage to her professional
6 reputation and the embarrassment, humiliation, and
7 indignity arising from the discriminatory conduct of
8 Defendant and/or agents or employees acting on its behalf,
9 and the stress and anxiety caused by her wrongful
10 termination and resultant financial hardship.

11 133. As a consequence of Defendant's action, Oracle is
12 additionally liable for
13 attorneys' fees and other costs and interest in pursuit of
14 this litigation.

15 **COUNT XI. RETALIATION UNDER THE ADAAA**

16 **42 U.S.C. §12112 ET SEQ.**

17 134. Plaintiff reincorporates by reference the allegations
18 above.

19 135. At all pertinent times, Plaintiff was entitled to
20 protection under the American Disabilities Act Amendments
21 Act of 2008 (ADAAA).

22 136. The ADAAA makes it unlawful to retaliate against any
23 person who engaged in protected activity. 42 U.S.C.
24 §12203(a)

1 137. Plaintiff engaged in protected activities and opposition
2 to practices made unlawful under the ADAAA while employed
3 by the Defendant.
4

5 138. As a result of his protected activities and opposition to
6 practices made unlawful under the ADAAA, Plaintiff was
7 subjected to adverse employment actions, including
8 termination and other adverse employment conditions that
9 may well dissuade an employee from filing a claim of
10 discrimination.
11
12

13 139. A casual connection exists between Plaintiff's protected
14 activities and the adverse employment actions taken by
15 Defendant.
16

17 140. Defendant's acts of retaliation caused Plaintiffs to
18 suffer economic losses, physical harm, mental and emotional
19 distress, embarrassment, humiliation and indignity.
20

21 141. This intentional, reckless, and/or willful retaliation by
22 the part of Defendant constitutes a violation of
23 Plaintiff's statutory rights under the ADAAA.
24

25 142. By reason of Defendant's retaliation, Plaintiff is
26 entitled to all legal and equitable remedies under the
27 ADAAA, including his attorney's fees.
28
29
30
31
32

COUNT XII. RETALIATION UNDER THE FAMILY MEDICAL LEAVE ACT (FMLA)

29 U.S.C. §2615 ET SEQ.

143. Plaintiff reincorporates by reference all the allegations above.

144. Under the FMLA it is illegal for the Defendant's to discharge or discriminate in any manner, against an individual for opposing any practice made unlawful under the FMLA. See 29 U.S.C § 2615 (a)(2).

145. This Court analyzes FMLA retaliation claims under the *McDonnell Douglas* framework. See *Yashenko v. Harrah's NC Casino Co., LLC*, 446 F.3d 541 (4th Cir. 2006). A *prima facie* case for retaliation exists where: (1) the plaintiff engaged in a protected activity; (2) the defendant took adverse action against him; and (3) the adverse action was causally connected to his protected activity. *Id.* (citing *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 301 (4th Cir. 1998)).

146. In the present instance, Pascone engaged in protected activity by requesting medical leave to make funereal arrangements for his brother and to care for his disabled mother.

147. Upon his request, his manager Rose, stopped communicating with Pascone on work related matters, preventing Pascone

1 from doing his job. He was then terminated in May 2019,
2 only to be terminated again in August 2019.

3 148. Because of the close proximity of the adverse actions, it
4 creates an inference of a causal connection that would
5 dissuade a reasonable employee from filing an FMLA claim.
6

7 149. Defendants' acts caused Plaintiff to suffer economic
8 losses.
9

10 150. This intentional, reckless, and/or willful act on the part
11 of the Defendant constitutes a violation of Pascone's
12 statutory rights under the FMLA.
13

14 151. By reason of Defendant's actions, the Plaintiff is
15 entitled to all legal, monetary liquidated and equitable
16 remedies under the FMLA, including his attorney's fees,
17 plus interest.
18
19

20 **PART VI. PRAYER FOR RELIEF**

21 **WHEREFORE**, the Plaintiff prays that this Honorable Court:
22

23 A. Declare that the Defendants committed one or more of the
24 following acts:

25 (i). That Oracle and Rose knowingly violated his rights
26 under 42 U.S.C. §1981, when they discriminated, harassed
27 and retaliated against the Plaintiff;
28 (ii) That Oracle discriminated against the Plaintiff on the
29 basis of race, sex, and disability in violation of Title
30 VII, 42 U.S.C §2000 et seq.
31 (iii). That Oracle racially and sexually harassed the
32 Plaintiff in violation of Title VII, 42 U.S.C §2000 et seq;
(iv) That Oracle Retaliated against Plaintiff for engaging
in protected activities under Title VII, 42 U.S.C §200 et
seq;

1 (v) That Oracle discriminated and retaliated against the
2 Plaintiff under the American Disabilities Act Amendments
3 Act of 2008 (ADAAA), 42 U.S.C. §12112 *et seq*; and that
4 (vi). Oracle retaliated against him under the Family
5 Medical Leave Act.

6 B. That the Court award Plaintiff damages in the amount
7 equal to all of his accumulated lost wages and benefits,
8 including back pay, front pay and benefits, punitive damages,
9 and compensatory and emotional damages for the financial,
10 physical and emotional harm caused by Defendant, including pre-
11 judgment and post judgment interest and any other damages
12 permitted under the federal laws, in an amount no less than
13 three million dollars (\$3,000,000.00);
14

15
16 C. That the Court also award Plaintiff payment of all fees,
17 costs and expenses inclusive of attorney's fees and expert fees
18 and any and all other remedies that the Plaintiff maybe entitled
19 to by all the laws and the powers of this Court.
20

21 **Part VII. Jury Demand**
22

23 Plaintiff requests a trial by jury on all counts.
24

25 Dated: December 28, 2020
26

Respectfully Submitted,
27

/s/ Monique A. Miles, Esq.
28

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30

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Pro Hac Vice Application Pending

Counsel for Plaintiff

Enc: Exhibit **A**, Tom Rose *LinkedIn* Profile

Exhibit **B**, Lawrence Jelly *LinkedIn* Profile